add a spoliation cause of action. The District Court denied that motion and eventually granted the Respondents' Motions for Summary Judgment. Mrs. Brown then filed the present action alleging violations of her right to access to the courts. Late in her first case, Mrs. Brown also learned that Respondent Kalina in this case engaged in similar conduct in *Kalina v. Fletcher*, 522 U.S. 118 (1997).

The expansion of the exhaustion of state administrative remedies requirements to all civil rights litigants and/or the pleading of the availability of administrative remedies through reliance on *Hudson*, is contrary to the clear language of *Hudson*, the subsequent federal legislation, and Supreme Court precedent decided after *Hudson*, including *Porter*.

The Respondents have also never identified what state administrative remedies would have granted the Petitioner's past and future wage loss damages, emotional distress damages, damages for damage to reputation, and prospective injunctive relief.

In further support of the Petitioner's argument, the proposed expansion of an exhaustion of the Respondents' unidentified state remedies violates the legislative intent of 42 U.S.C. § 1983, which should be liberally construed to effect its remedial purposes.

The decisions of the lower courts requiring that a person plead and prove the exhaustion of state remedies simply violates the rule of the Court laid out in *Porter v. Nussle*.

2. A person bringing a claim under 42 U.S.C. § 1983 is only required to plead that a person deprived her of a federal right and that the person acted under color of state law and the decision below violates the clear law of the Court laid out in *Gomez v. Toledo*, 446 U.S. 635 (1980).

The Court below also dismissed Mrs. Brown's 42 U.S.C. § 1983 claims because she did not "plead intent or purpose to discriminate against the plaintiff based upon his or her membership in a protected class". App. 9a. Mrs. Brown was only required to plead the fact that the Respondents deprived her of a federal constitutional or statutory right and the Respondents deprived her of that right acting under color of state law. *Gomez v. Toledo*, 446 U.S. 635,640 (1980)(citing *Monroe v. Pape*, 365 U.S. 167,171 (1961)). Justice Marshall emphasized this point while delivering the opinion of the U.S. Supreme Court in *Gomez v. Toledo*:

> "By the plain terms of § 1983, two – and only two – allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state law or territorial law." *Id.*

Mrs. Brown properly pled her 42 U.S.C. § 1983 claims under Cause of Action One against four county officials because she alleged they destroyed and altered evidence, and tampered with witnesses to prevent her from using the evidence and the testimony in her civil

rights and sex discrimination civil action. She alleged the Respondents violated her rights under the Fourteenth Amendment and she alleged the Respondents acted under color of state law. Mrs. Brown therefore alleged a prima facie case and she is entitled to a reversal of the decision below.

Apart from satisfying the pleading requirements of her 42 U.S.C. § 1983 claim, Mrs. Brown quoted the case name of her discrimination case more than once in her Cause of Action One. She also incorporated her facts section into her Cause of Action One section by repeating and realleging each and every allegation set forth in the foregoing and following paragraphs as if fully set forth in Cause of Action One.

3. County officials violate a person's right of access to the federal courts under *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983) and the person's rights under the First and Fourteenth Amendments when the officials destroy and alter evidence, and the Court below has affirmed a departure from this rule.

The Lower Court affirmed the District Court which granted the Respondents' motion for judgment on the pleadings and denied Petitioner's motion for summary judgment on the basis that the Fourteenth Amendment does not protect a litigant from the destruction and alteration of evidence by county officials. App. 9a.

When county officials destroy evidence and alter evidence to impede an individual's access to the courts they are liable under the Fourteenth Amendment and 42 U.S.C. § 1983. U.S. Const., Amend. I, XIV, *Bill*

Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 741 (1983). While citing *Bill Johnson's Restaurants*, the Seventh Circuit summarized the rule and stated in *Harrell v. Cook*:

> "The right of individuals to pursue legal redress for claims which have a reasonable basis in law and fact is protected by the First and Fourteenth Amendments. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); *Bell v. City of Milwaukee*, 746 F.2d 1205, 1261 (7th Cir. 1984). A corollary of this right is that efforts by state actors to impede an individual's access to courts or administrative agencies may provide the basis for a constitutional claim under 42 U.S.C. § 1983." *Harrell v. Cook*, 169 F.3d 428,432 (7th Cir. 1999).

In *Bill Johnson's Restaurants*, this Court clearly ruled that a litigant is protected from document destruction and alteration under the Fourteenth Amendment and Petitioner therefore requests a reversal and remand on Petitioner's 42 U.S.C. § 1983 claims.

4. The Petitioner satisfied the "pleading the class requirement" of 42 U.S.C. § 1985 when she alleged that the Respondents destroyed and altered evidence to prevent the her from litigating a federal civil rights action in which she alleged she was wrongfully discharged shortly after she informed King County she was pregnant.

The Lower Court affirmed the District Court which ruled that Mrs. Brown did not allege sufficient facts supporting discriminatory intent and discrimination against Mrs. Brown based on her membership in a protected class. App. 1a, 2a, 9a.

A person who alleges gender discrimination is a protected class for purposes of 42 U.S.C. § 1985. *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130,1134-35 (9th Cir. 2003), *Volunteer Medical Clinic, Inc. v. Operation Rescue*, 948 F.2d 218,224 (6th Cir. 1991).

In the first two sentences of the facts section of her complaint, Mrs. Brown alleged in her Complaint that she was wrongfully discharged shortly after she informed King County she was pregnant. She then alleged she filed a civil rights complaint based on the discrimination. Mrs. Brown then alleged that each of the Respondents destroyed and altered, or conspired to destroy and alter evidence. Id. She also realleged each of the foregoing and following allegations at the beginning of each of her causes of action. Petitioner then alleged in detail how each Respondent violated her rights.

A cause of action also arises under 42 U.S.C. § 1985(3) if a plaintiff can show the defendants conspired for the purpose of depriving, either directly or

indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws. 42 U.S.C. § 1985(3) at App. 24a, *Griffin v. Breckenridge*, 403 U.S. 88,102-3 (1971). In this case, Petitioner alleged she was discriminated against and filed a civil rights action.

Allegations of witness intimidation under Section 1985(2) will also suffice for a cause of action if it can be shown the litigant was hampered in being able to present an effective case. *Blankenship v. McDonald*, 176 F.3d 1192,1195 (9th Cir. 1999)(quoting *David v. U.S.*, 820 F.2d 1038,1043 (9th Cir. 1987)). Mrs. Brown argued the Respondents altered and destroyed evidence to prevent her from having a fair trial on her sex discrimination and civil rights claims. Mrs. Brown also alleged that Respondent Scott required the prospective employees to sign a document affirming they had destroyed the employee manual. The witnesses were therefore forced to affirm in writing to their supervisor that they had destroyed the documents.

When the Respondents' motion for judgment on the pleadings is reviewed de novo, and all allegations in the complaint are taken as true, the Respondents are not entitled to judgment as a matter of law on either of Mrs. Brown's 42 U.S.C. § 1985 claims. *Enron Oil Trading & Transportation Co. v. Walbrook Ins. Co.*, 132 F.3d 526,528 (9th Cir. 1997)(citations omitted). A judgment on the pleadings may only be granted when pleadings show that it is beyond doubt that plaintiff can prove no set of facts in support of plaintiff's claim which would entitled plaintiff to relief. *Enron*, 132 F.3d at 529 (citations omitted). *Merchants Home Delivery Service, Inc. v. Hall & Co.*, 50 F.3d 1486,1488 (9th Cir. 1995).

5. An internal memo ordering the destruction of documents relevant to a federal civil rights case satisfies the "corruptly persuade" element of a claim under 18 U.S.C. § 1512(b)(2) and the nexus requirement of *Arthur Andersen v. United States*, Case No. 04-368, *slip op.* (May 31, 2005) for purposes of a civil cause of action under 18 U.S.C. § 1964.

The Lower Court affirmed the following District Court ruling:

> "Plaintiff alleges that Defendants violated 18 U.S.C. § 1512(b)(2) when they destroyed copies of certain administrative guidelines. However, Plaintiff fails to assert that Defendants used threats or intimidation or any of the other frowned-upon techniques enumerated in the text of the statute. For this reason alone, her RICO claim fails." App. 12a.

This is a misapplication of the statute because 18 U.S.C. § 1512(b)(2) states that a person is liable if the person uses corrupt persuasion, misleading conduct, or attempts to take these actions to withhold a record, document, or other object, from an official proceeding, or alter or destroy, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding. 18 U.S.C. § 1512(b)(2) at App. 26a.

Petitioner obtained an internal memo which Respondent Scott had issued shortly after the Respondents learned that the Petitioner was about to file a federal civil rights action. App. 14a. Petitioner's attorney reminded King County's attorney Slonecker in

writing that each of the documents Scott was ordering destroyed were relevant to the federal civil rights action. App. 15a. Scott refused to stop the destruction of documents. Scott also required that each employee who had the document ordered destroyed sign a statement affirming the document had been destroyed. Slonecker then changed her earlier quotation of the nepotism rule which was contained in the destroyed documents and added an "and" after the second of three ways the Petitioner could have shown nepotism. The first quote of the rule by Slonecker showed the list was disjunctive. Kalina then provided various documents to Petitioner's attorney which conflicted with the earlier quote of the nepotism rule and several documents which showed signs of tampering.

Under Petitioner's third cause of action, she alleged the Respondents violated 18 U.S.C. § 1961(1)(B) and 18 U.S.C. § 1512 by ordering the destruction of the employee manual, titled the "Administrative Guidelines", reversing the first quote of the nepotism rule, altering a copy of the Administrative Guidelines to reflect the change to the nepotism rule, changed a copy of the Administrative Guidelines to show that all employees were "at-will", removed the applicable union agreement from a county ordinance which stated that employees could only be discharged for "just cause", and replacing it with an agreement which was not the union agreement and which did not contain the "just cause" provision. The Respondents also submitted various declarations stating that the altered documents were the true and correct documents.

Mrs. Brown alleged sufficient facts to establish violations of 18 U.S.C. §§ 1962 and 1512 through corrupt persuasion, misleading conduct, and conspiracy related to the administrative guidelines and she is

entitled to a reversal of the lower Court's dismissal. Mrs. Brown alleged violations of 18 U.S.C. § 1964(c) and 18 U.S.C. § 1964(d). A motion for judgment on the pleadings is reviewed de novo. *Enron*, Id. Construction of statutes is a question of law and reviewed de novo. *U.S. v. Khatami*, 280 F.3d 907,910 (9th Cir. 2002)(citing *U.S. v. Jackson*, 72 F.3d 1370,1376 (9th Cir. 1995)). 18 U.S.C. § 1964(c) states that any person injured in his business or property by reason of a violation of 18 U.S.C. § 1962 may bring a civil action for damages, threefold damages, costs, and attorney's fees. 18 U.S.C. § 1964(c) at App. 25a. 18 U.S.C. § 1964(c) states:

> "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1964(c).

18 U.S.C. § 1964(d) states that it is also unlawful for any person to conspire to violate 18 U.S.C. § 1964(c). 18 U.S.C. § 1964(d).

The U.S. Congress specifically stated that 18 U.S.C. §§ 1961-64 are to be "... liberally construed to carry out the remedial purposes". *Sedima SPRL v. Imrex Co.*, 473 U.S. 479,498 (1985)(quoting Organized Crime Control Act, Pub. L. 91-452, § 904(a), 84 Stat. 947 (1970)).

The Respondents were persons associated in fact who constituted an enterprise under 18 U.S.C. § 1961. *U.S. v. Turkette*, 452 U.S. 576, 585 (1981). The

Respondents engaged in a pattern of racketeering activity by each committing not less than two acts of racketeering activity within the past ten years. 18 U.S.C. § 1961(5). The Respondents violated 18 U.S.C. §§ 1962(c) and 1962(d). The Respondents engaged in racketeering activity directly or conspired to commit racketeering activity, including racketeering activity under 18 U.S.C. § 1961(1)(B), by each violating 18 U.S.C. § 1512. Conspiracy is defined as "an agreement to conduct or participate in the affairs of an enterprise and an agreement to the commission of at lease two predicate acts." *Neibel v. Trans World Assur. Co.*, 108 F.3d 1123,1128 (9th Cir. 1997)(citations omitted).

A person violates 18 U.S.C. § 1512(b)(2) by:

> "Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to - (2) cause or induce any person to - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;" 18 U.S.C. § 1512(b)(2) (emphasis added), App. 26a.

The statute does not define the phrases "corruptly persuades" or "misleading conduct". The Ninth Circuit applied defined the phrase "corruptly persuades" in 18 U.S.C. § 1512 as follows:

> "In the legal context, "corrupt" means "[s]poiled; tainted, vitiated, depraved; debased; morally degenerate." *Black' s Law Dictionary* 345 (6th ed. 1990). ... Elsewhere, "corrupt" is defined as "characterized by improper conduct (as bribery or the selling of favors)," ... Synthesizing these various definitions of "corrupt" and "persuade," we note the statute strongly suggests that one who attempts to "corruptly persuade" another is, given the pejorative plain meaning of the root adjective "corrupt," motivated by an inappropriate or improper purpose to convince another to engage in a course of behavior." *Khatami*, 280 at 911-12.

Mrs. Brown alleged the Respondents ordered and conspired to order the destruction of documents, and altered, destroyed, or concealed documents, after they learned of Mrs. Brown's federal discrimination lawsuit.

After the Petitioner filed her brief with the Court of Appeals, this Court ruled in *Arthur Anderson* that a person who is alleged to have violated 18 U.S.C. 1512(c) must have had notice that the documents which were destroyed were relevant to a federal action. *Arthur Andersen v. United States*, Case No. 04-368, *slip op.* at 11 (May 31, 2005). In the present case, the Petitioner's attorney informed the Respondents immediately after the memo was obtained (which was two days after it was issued) that the memo was resulting in the destruction of evidence relevant to Petitioner's federal civil rights action. App. 15a. The Respondents already had this knowledge because under state law, Mrs. Brown was required to submit a tort claim for her pendant state claims. After the

Respondents received the Petitioner's memo, the Respondents refused to stop the destruction. The Respondents then altered the nepotism rule and "just cause for termination" rules in the employee manual, and submitting declarations stating that the new documents were authentic and their previous quote of the nepotism rule in response to the tort claim form was a mistake.

Petitioner is entitled to a reversal of the Lower Court, a remand, and the relief requested in her Complaint.

CONCLUSION

For all of the reasons identified herein, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, and ultimately, to reverse the order granting Respondents' motion for judgment on the pleadings; to grant the Petitioner's motion for summary judgment; and remand the matter to the District Court for further proceedings; or to provide the Petitioners with such other relief as is fair and just in the circumstances.

Respectfully submitted,
Shawn Hart
Hart Law Office
5000 – 22nd Ave. N.E.
Ste. 410
Seattle, WA 98105
(206) 524-4482

NO. 04-35374
D.C. NO. CV-04-00127-JCC

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LISA BROWN, a married woman
and her marital community,
Plaintiff - Appellant,

v.

LYNNE KALINA, King County
Deputy Prosecuting Attorney and
her marital community; et al.,
Defendants - Appellees.

JUDGMENT

Appeal from the United States District Court for the Western District of Washington (Seattle).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is

AFFIRMED.

Filed and entered 08/04/05

NO. 04-35374
D.C. NO. CV-04-00127-JCC
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LISA BROWN, a married woman and her marital community, Plaintiff - Appellant,

v.

LYNNE KALINA, King County Deputy Prosecuting Attorney and her marital community; et al., Defendants - Appellees.

ORDER*

Appeal from the United States District Court for the Western District of Washington John C. Coughenour, Chief Judge, Presiding

Submitted August 1,2005**
Seattle, Washington

Before: NOONAN, T.G. NELSON, and WARDLAW, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The order of the district court dismissing Lisa Brown's complaint with prejudice is AFFIRMED.

CASE NUMBER: C04-127C
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LISA BROWN

v.

LYNNE KALINA,
RON SIMS, SUSAN SLONECKER,
DANA SCOTT, LINDA CZEISLER

JUDGMENT IN A CIVIL CASE

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Defendants Motion is GRANTED and Plaintiff's complaint is DISMISSED with prejudice in its entirely.

April 13, 2004
BRUCE RIFKIN
Clerk

s/L. Simle
By, Deputy Clerk

Case No. CV04-0127
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LISA BROWN, a married woman and her marital community, Plaintiff,

v.

LYNNE KALINA, Senior King County Deputy Prosecuting Attorney and her marital community, RON SIMS, King County Executive and his marital community, SUSAN SLONECKER, Senior King County Deputy Prosecuting Attorney and her marital community, DANA SCOTT and her marital ommunity, and LINDA CZEISLER and her marital community,

ORDER

I. INTRODUCTION

This matter has come before the Court on Defendants' Motion for Judgment on the Pleadings (FRCP 12(c)). (Dkt. No. 11.) Having carefully considered the papers filed by the parties in support of and in opposition to Defendants' motion, the Court hereby GRANTS Defendants' motion.

II. BACKGROUND

Plaintiff Lisa Brown brings this action to recover damages under 42 U.S.C. §§ 1983, 1985, and 1988, the Fourteenth Amendment of the United States Constitution, and the Racketeer Influenced and

Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961-68. (Compl. at 1) Plaintiff alleges, among other things, that Defendants in this action wrongfully and unlawfully conspired to deprive her of her due process and equal protection rights by tampering with or destroying evidence related to a separate lawsuit filed by Plaintiff in March 2001.

Plaintiff's previous lawsuit, brought against King County and various King County employees, and filed under Cause No. C01-0430C, alleged that King County had violated her rights under state and federal law by maintaining an illegal compensation scheme, by engaging in nepotism, by discriminating against her when she became pregnant, and by wrongfully refusing to produce public records in response to her request. Most of Plaintiff's claims were resolved in favor of the defendants on summary judgment. Only Plaintiff's allegation that the defendants had violated Washington's Public Disclosure Act ("PDA"), Wash. Rev. Code § 42.17, proceeded to trial. Plaintiff now brings this suit alleging that Defendants' wrongful conduct caused the result in C01-0430C.

III. ANALYSIS

A. Applicable standard

Defendants have filed a motion to dismiss on the pleadings pursuant to Fed. R. Civ. P. 12(c). "Judgment on the pleadings is proper when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Honey v. Distelrath*, 195 F.3d 531 (9th Cir. 1999)(citing *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998)). This Court may grant a judgment on the pleadings if "the

moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp. v. Walbrook Ins. Co.*, 132 F.3d 526, 529 (9th Cir. 1997) (quoting *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) (citations omitted)). Judgment "may only be granted when the pleadings show that it is 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Enron*, 132 F.3d at 529 (citing *B.F. Goodrich v. Betkoski*, 99 F.3d 505, 529 (2d Cir. 1996) (citations omitted)). Because the standards are so similar, courts often discuss Fed. R. Civ. P. 12(b)(6) motions to dismiss for failure to state a claim when confronted with a Fed. R. Civ. P. 12(c) motion for judgment on the pleadings. 5 James Wm. Moore et al., *Moore's Federal Practice* ¶ 12.38 (3d ed. 2003) (referencing *Gleave v. Graham*, 954 F. Supp. 599, 605 (W.D.N.Y. 1997) (same standards govern motions under Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(c), so since courts may consider matters of judicial notice in former motion, court also may do so in latter motion); *Menominee Indian Tribe of Wis. v. Thompson*, 943 F. Supp. 999, 1005 (W.D. Wis. 1996), aff'd , 161 F.3d 449 (7th Cir. 1998) (because standards are similar court treated defendants' motions as Fed. R. Civ. P. 12(c) motions, but applied standards of Fed. R. Civ. P. 12(b)(6) motion)). In its consideration of Defendants' motion, the Court may refer to court documents from CV01-0430C because this file is a public record and thus well within the Court's scope of materials to consider. See *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995) (commenting that the court may consider matters of public record) (citing *Mack v. S. Bay Beer Distribs, Inc.*, 798 F.2d 1279, 1282 (9th Cir.

1986); *Henson v. CSC Credit Srvs.*, 29 F.3d 280, 284 (7th Cir. 1994) (finding that, on motion to dismiss, district court properly considered public court documents filed in earlier state court proceedings)). Therefore, the Court's consideration of court documents from the prior lawsuit does not convert Defendants' motion to dismiss under Fed. R. Civ. P. 12(c) into a motion for summary judgment requiring that Plaintiff be given an additional opportunity to respond.

B. Plaintiff's 42 U.S. C. § 1983 claims

An individual may assert a claim under 42 U.S.C. § 1983 against a person who, "under color of any statute, ordinance, regulation, custom or usage" of state or territorial law denies another person a federal right. 42 U.S.C. § 1983. Plaintiff's complaint alleges four § 1983 claims, as follows. Plaintiff claims that the following federally guaranteed rights, privileges or immunities were violated: 1) right to due process, 2) equal protection, 3) a right under 29 C.F.R. § 1602.14 (prohibiting destruction of material related to a complaint); and 4) a right under a rule propounded by this Court prohibiting destruction of any identified document related to a complaint. In order to state a prima facie case under § 1983, Plaintiff must show that 1) Defendants acted under color of state law, and 2) deprived Plaintiff of constitutional or other federally guaranteed rights. *Borunda v. Richmond*, 885 F.2d 1384, 1391 (9th Cir. 1988). With respect to procedural due process claims involving intentional deprivation of property by a state official, such deprivations "do not constitute . . . violation[s] of the . . . Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."

Hudson v. Palmer, 468 U.S. 517, 533 (1984). The rule laid down in Hudson means that a plaintiff seeking to state a claim for due process violations under § 1983 must also allege that available state remedies, if any, for the alleged deprivation are or were inadequate. Here, Plaintiffs complaint omits any mention of the inadequacy of state remedies. Therefore, the Court finds that Plaintiff has failed to state a claim under § 1983 for procedural due process violations. Section 1983 claims involving rights under the equal protection clause must include allegations that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon his or her membership in a protected class. *Washington v. Davis*, 426 U.S. 229, 239-40 (1976); *Sischo-Nownejad v. Merced Community College Dist.*, 934 F.2d 1104, 11 12 (9th Cir. 1991). Plaintiffs complaint fails to make the necessary factual allegations of discriminatory intent. While Plaintiffs previous lawsuit against King County alleged that King County and various individuals had discriminated against her on the basis of her sex and because she was pregnant, Plaintiff makes no such allegations about Defendants in the case at bar. Plaintiff makes no connection between Defendants' alleged wrongful conduct and any intent or purpose to discriminate against her because of her sex or because she is or was pregnant. Accordingly, the Court finds that Plaintiff has failed to state a claim under § 1983 for equal protection violations. Plaintiff attempts to invoke § 1983 with respect to two other purported "rights," one she believes was conferred by an Equal Employment Opportunity Commission ("EEOC") regulation, 29 C.F.R. § 1602.14, and the other conferred by a federal district court case, *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291 (W.D. Wash. 1994). Section 1983 does

not create a right of action under either the regulation or the federal district court ruling. In the Ninth Circuit, § 1983's use of the word "laws" in the clause "rights, privileges, or immunities secured by the Constitution and laws" of the United States has been held not to include agency regulations. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 936 (9th Cir. 2003). In *Save Our Valley*, the Ninth Circuit held that "an agency regulation cannot create individual rights enforceable through § 1983." Id. The court also explained that "[I]ndividual rights enforceable through § 1983 - like implied rights of action - are creatures of substantive federal law; therefore, they must be created by Congress." Id. at 939. To the extent that Seattle Audubon Society may be read to create a "right," it is not a actionable right under § 1983. In any case, Plaintiff appears to have misinterpreted the import of Seattle Audubon Society. Rather than creating a "right," *Seattle Audubon Society* discusses an evidentiary rule permitting a fact-finder confronted with the purposeful destruction of known relevant evidence to presume that the evidence was adverse to the party responsible for the destruction. 871 F. Supp. at 1308 (citing *Glover v. BIC Corp.*, 6 F.3d 1318, 1329 (9th Cir. 1993)). For these reasons, the Court finds that Plaintiff has no § 1983 claim involving either the EEOC regulation or Seattle Audubon Society. In accordance with the foregoing, the Court finds that all of Plaintiffs § 1983 claims lack merit and must be dismissed. As the Court finds that Plaintiff has not properly stated any 1983 claim, her related conspiracy claims must also fail.

C. Plaintiff's 42 U.S. C. § 1985 claims

Plaintiff brings claims under 42 U.S.C. § 1985(2) and (3). The first clause of subsection (2), which Plaintiff invokes (Pl.'s Resp. at 9), creates a cause of action where "two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully and truthfully." 42 U.S.C. § 1985(2). The plain language of the statute protects against deterrence by force, intimidation or threat. However, Plaintiffs claims rest solely upon allegations of destruction and alteration of evidence. Destruction and alteration of evidence alone do not constitute force, intimidation or threat under § 1985(2), and Plaintiff fails to explain the specifics of why or how such activity, in her case, might have taken on such a threatening or intimidating affect. For this reason, the Court finds that Plaintiff has failed to state a § 1985(2) claim. In order to state a § 1985(3) claim, Plaintiff must allege that the actions complained of were taken for discriminatory reasons. *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). However, as in her § 1983 claims, Plaintiff fails to make any allegations that Defendants acted because of any animus towards a protected class. Plaintiff does not make any allegations as to why Defendants wanted to prevent her from having a fair trial beyond that such actions were taken "in an attempt to prevent embarrassment to themselves and to the county." (Pl.'s Resp. at 10.) This alleged objective, though perhaps craven, is not in violation of § 1985(3). Without actual allegations of animus, the Court may not sua sponte infer from the subject matter of her previous lawsuit that the alleged wrongdoing at issue in this action also involves impermissible class-based

discrimination. For these reasons, the Court finds that Plaintiff has failed to state a § 1985(3) claim.

D. Plaintiff's RICO claims

Plaintiffs RICO claims derive from an assertion that Defendants engaged in racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B) through violations of 18 U.S.C. § 1512(b)(2), which prohibits, in relevant part, the knowing use of intimidation, threats, corrupt persuasion, or misleading conduct in order to cause or attempt to cause another person to destroy or alter documents. Plaintiff alleges that Defendants violated 18 U.S.C. § 1512(b)(2) when they destroyed copies of certain administrative guidelines. However, Plaintiff fails to assert that Defendants used threats or intimidation or any of the other frowned-upon techniques enumerated in the text of the statute. For this reason alone, her RICO claims must fail.

IV. CONCLUSION

In accordance with the foregoing, the Court finds that Plaintiff failed to make sufficient factual allegations to fully support any of her claims. Therefore, even taking all of Plaintiffs allegations as true, the Court finds that Defendants are entitled to judgment as a matter of law on each and every one of Plaintiffs claims.

Defendants' motion is GRANTED and Plaintiffs complaint is dismissed with prejudice in its entirety. The clerk is directed to enter judgment accordingly.

SO ORDERED this 13th day of April, 2004.

s/ John C.
Coughenour

CHIEF UNITED
STATES DISTRICT
JUDGE

Scott, Dana

From: Scott. Dana
Sent: Monday, February 12, 2001 11:31 AM
To: ZZgrp, SC KCCH Court Reporters
Cc: Rodenberg, John; Manolopoulos, Paul
Subject: Administrative Guidelines

Please pick up your copy of the newly revised Administrative Guidelines from the Court Operations office, W855. Upon receipt you will be asked to sign the blue form located in the inside pocket of the binder, acknowledging you have, indeed, received your copy. After signing, please return it to either John Rodenberg or Dana. These will be filed in the Human Resources office.

If you have the old version of the Administrative Guidelines please destroy them.

Thank you,

Dana Scott
Court Operations Supervisor
(206) 296-9367

HART LAW OFFICE
5000 - 22nd Ave. N-E. Suite 410
Seattle, WA 98105
Tel./Fax (206) 524-4482

February 14, 2001

Susan Slonecker
King County Deputy Prosecuting Attorney
FAX (206) 296-0420

Re: Lisa Gail Brown Matter - Request to stop destroying evidence.

THIS MEMO HAS A RESPONSE DEADLINE OF 4:00 P.M. ON THURS. 2/15/01.

Dear Ms. Slonecker:

As you know, based on my previous correspondence to King County and to you, I am contemplating litigation in Federal District Court for the Western District of Washington against King County on behalf of Lisa Brown. I have recently learned that Dana Scott is instructing prospective witnesses to destroy material and relevant evidence to the federal case. See Exhibit ("Ex.") 1. In her 2/12/01 memo, Dana Scott instructs the court reporters, "If you have this old version of the Administrative Guidelines please destroy them." As you yourself stated in your response to my tort claim, these administrative guidelines will be a key document in this case. Many of the court reporters Dana Scott is instructing to destroy the guidelines will be witnesses in the trial. The memo also states the guidelines have been "newly revised".

Approximately one month ago I requested a copy of these guidelines in a Public Records Act Request. Ex. 2. Approximately three weeks ago I requested a status on my request. Ex. 3. Approximately two weeks and a half weeks ago Claudia Olney stated she would not be able to respond in accordance with Washington State Law. Ex. 4. I have received no documents.

I request that you immediately take the following steps:

1. Immediately rescind the 2/12/01 Memo from Dana Scott to ZZGrp, SC KCCH Court Reporters dated 2/12/01,

2. Issue a new memo instructing all court reporters and relevant supervisory personnel to not destroy and instead preserve any records related to their employment with King County Superior Court from 1995 to the present,

3. Agree not to destroy any records which would be material and relevant to the pending litigation as defined in my correspondence to King County and to counsel for King County, and

4. Provide a complete and certified copy of all versions of the administrative guidelines which applied from 1998 to the present by 12:00 p.m. on Friday February 16, 2001 at the front desk of the King County Prosecuting Attorney's Office, Civil Division, King County Administrative Building.

Your signatures below will signify that you will comply with steps 1-4 above. Please fax your signatures on this letter by 5:00 p m- on February 15, 2001 to 524-4482. Failure to fax your signatures on this letter by this deadline will signify that you do not intend to comply with steps 1-4 and may cause me to take action with the Federal District Court for the Western District of Washington.

King County and supervisory personnel may also be liable under other federal or state law if a court reporter has already destroyed evidence relevant to the litigation described in Lisa Brown's tort claim form, demand letter, draft complaint, and my correspondence to you while complying with Dana Scott's memo, Ex. 1, or other instructions.

Sincerely,

HART LAW OFFICE

s/ Shawn Hart

Shawn Hart

KING COUNTY PROSECUTING ATTORNEY

Susan Slonecker

KING COUNTY SUPERIOR COURT

Dana Scott

Att: Ex. 1. 2/12/01 Memo from Dana Scott to ZZGrp, SC KCCH Court Reporters.

Ex. 2. 1/16/01 Letter from Shawn Hart to Claudia Olney.
Ex. 3. 1/24/01 Letter from Shawn Hart to Claudia Olney.
Ex. 4. 1/26/01 Letter from Claudia Olney to Shawn Hart.

Cc: Lisa Brown

ARTICLE 12: EMPLOYEE RIGHTS

Up to two (2) Union Stewards representing the Union's interest during contract negotiations are authorized to meet with Court management during working hours without loss of pay.

ARTICLE 11: EMPLOYEE RIGHTS

Section 1. If at any level, the Court determines to bring disciplinary action against an employee for any reason, the employee shall be apprised of his/her rights of appeal, and representation as provided in the Grievance Procedure of this Agreement. The Court may suspend without pay or terminate an employee for just cause.

Section 2. The employee and/or representative may examine the employee's personnel file if the employee so authorizes in writing. Materials placed into the employee's file relating to job performance or personal character shall be brought to his or her attention. The employee may challenge, through the grievance procedure, the propriety of including it in the files. The employee shall have the right to insert documentation into the file providing such documentation is relevant to the challenge. Unauthorized persons shall not have access to employee files or other personal data relating to their employment.

Section 3. When an employee is charged with a violation of the Court's Administrative Guidelines for Personnel Management, the facts and circumstances involved will be discussed and reviewed with appropriate Union officials prior to effecting any disciplinary action involving loss of pay except in circumstances where immediate action is appropriate. After the discussion and review with the Union offices, any such action is grievable under the grievance procedure contained herein provided the time limitations are met.

Employees may use the grievance procedure at step 1 and 2 to challenge disciplinary actions; the Union may submit a grievance on a disciplinary action into steps 3 and 4, or request mediation as provided in Article 10.

Section 4. As new policies are developed, the Court Administrator will provide the Union with copies of employer policies and procedures which affect employee wages, hours and working conditions.

Section 5. The Court Administrator agrees to permit the Union to post on a Superior

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances.

United States Constitution, Amendment XIV, Section 1:

... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1343(a)(4)

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United

States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...

42 U.S.C. Section 1997e

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

...

42 U.S.C. Section 1985

...

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving,

either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

18 U.S.C. Section 1964

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, ...

...

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States

district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, ...

18 U.S.C. Section 1512

...

(b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to -

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to -

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

...

shall be fined under this title or imprisoned not more than ten years, or both.

...